

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re Petition of)	
)	
Entravision Holdings, LLC)	CSR-8944-A
)	
For Modification of the Television Market)	
For Station WJAL(TV), Silver Spring, Maryland)	
TO: The Secretary		
Attn: Chief, Media Bureau		

OPPOSITION TO PETITION FOR SPECIAL RELIEF

Comcast Cable Communications, LLC, on behalf of its subsidiaries and affiliates, including Comcast of Maryland, LLC, Comcast of Potomac, LLC, Comcast of Virginia Inc., and Comcast of the District, LLC (individually and collectively, “Comcast”), hereby opposes the Petition submitted in this proceeding by Entravision Holdings, LLC (“Entravision”) to modify the television market of WJAL(TV), Silver Spring, Maryland (“WJAL” or “Station”).

SUMMARY AND BACKGROUND

Entravision, as the “successful bidder for a license relinquishment in the Incentive Auction,”¹ received \$25.5 million to vacate WJAL’s original channel allocation (WJAL(TV), Hagerstown, MD) and surrender its spectrum rights to the Commission.² Entravision also entered into a channel sharing arrangement (“CSA”) with WUSA(TV), Washington, DC, which is over 60 miles from Hagerstown, moving its community of license from a more rural part of the

¹ Petition of Entravision Holdings, LLC for Modification of the Television Market for Station WJAL(TV), Silver Spring, MD, CSR-8944-A, at 3 (Nov. 7, 2017).

² See *Incentive Auction Closing and Channel Reassignment Public Notice*, 32 FCC Rcd. 2786, Appendix A (2017).

state to suburban Silver Spring. Based on this new CSA, Entravision now seeks reversal of a market modification decision issued by the Commission in 2003, which expressly denied WJAL carriage in the very Cable Communities throughout the Washington, DC metro area where it now seeks must-carry rights.³ Moreover, Entravision seeks these must-carry rights despite the fact that – contrary to the claims and evidence submitted in its Petition – WJAL broadcasts the same programming that currently is broadcast by another Entravision station that Comcast already carries in the Cable Communities.

In the *Comcast Order*, after careful evaluation of multiple factors under the governing statutory test,⁴ the Commission properly modified WJAL’s must-carry market to exclude 97 communities in the Washington, DC DMA.⁵ WJAL had never previously been carried in these communities,⁶ and that continued to be the case during the 14 years since issuance of the *Comcast Order*. Yet having just surrendered the Station’s broadcast allocation in the Incentive Auction, Entravision is now requesting a vast expansion of WJAL’s long-established must-carry market – so as to include for the first time over 100 Comcast communities in the Washington, DC DMA (“Cable Communities”) – some of which are more than 100 miles away from

³ See *Comcast Cablevision of the District, LLC et al.*, 18 FCC Rcd. 16510 (2003) (“*Comcast Order*”).

⁴ See 47 U.S.C. § 534(h)(1)(C)(ii)(I)-(V).

⁵ The Commission noted that “WJAL has no history of carriage and no discernable viewership in the communities at issue.” *Comcast Order* ¶ 14. The *Comcast Order* also specifically rejected WJAL’s claim that its provision of “a broad range of programming intended to appeal to residents in the Comcast communities and throughout the DMA” merited market inclusion. *Id.* ¶ 8. The Commission observed that WJAL “offered no evidence that the programming it now provides is more locally-focused than . . . under the station’s previous ownership.” *Id.* ¶ 15. Most importantly, the Commission made clear that WJAL’s provision of Grade B signal coverage to a few of the communities at issue did not justify market inclusion. The *Comcast Order* explained, “[T]his [coverage] factor alone is not sufficient to overcome the station’s failure to meet any of the other market modification factors.” *Id.* ¶ 15.

⁶ See *Comcast Order* ¶ 6.

Hagerstown – in addition to the communities in which it already is carried.⁷ The request is premised almost entirely on the new signal contour that WJAL claims it will enjoy under its CSA with WUSA. Indeed, the Petition asks the Commission to disregard every statutory factor other than signal contour in evaluating Entravision’s market modification request. As a threshold matter, and detailed further below, there are fatal flaws in Entravision’s showing even under this factor. Moreover, this one factor standing alone simply does *not* justify the requested relief. Signal coverage was not the controlling factor in the 2003 market modification decision, and it should not be the controlling factor in 2017. Reversing the *Comcast Order* based on this single factor would be particularly inappropriate in this case, given the absence of any programming nexus between WJAL and the Cable Communities and WJAL’s programming which duplicates programming already available in the community.

Accordingly, since the Petition fails under every prong of the traditional market modification criteria, Comcast respectfully urges the Commission to deny the Petition.

Denial of the Petition is particularly warranted for another reason as well. The Commission has administered market modification petitions for nearly a quarter century. But, as Entravision concedes, CSA stations are “new to the market modification process.”⁸ Channel sharing arrangements did not exist when the current must-carry regime was created by Congress and implemented by the Commission. These arrangements present unique challenges and considerations, as manifest in this proceeding. Most importantly, if the Commission were to grant the Petition in this new context, it would unjustifiably encourage broadcasters to manipulate the Commission’s authorization of CSAs under the Incentive Auction by vacating

⁷ See Petition at 2-3 nn. 1, 2, 3, 4, 5 & Exhibit F.

⁸ Petition at 5.

their broadcast allocations (after having received millions in auction revenues) in order to expand must-carry rights, through a CSA, far beyond those associated with its original spectrum allocation. The Commission should thus send a message through its denial of the Petition that such marketplace behavior will not be condoned.

I. **THE COMMISSION SHOULD CLOSELY EXAMINE MARKET MODIFICATION PETITIONS INVOLVING CHANNEL SHARING ARRANGEMENTS**

The channel sharing option was created to facilitate the reclamation of broadcast spectrum under the Incentive Auction. This new licensing option provided a means for licensed broadcasters to continue operating even after “selling” the spectrum associated with their original broadcast station. Historically, a broadcast station was entitled to a *single* must-carry claim. Now, under auction-related channel sharing, *two* (or more) must-carry claims can be made where a broadcast licensee “shares” its spectrum with other broadcast licensees – the first for the “host” licensee (the sharer), and the second (or more) for the “hosted” licensee(s) (the sharee(s)).

The Commission intended the practical effect of channel sharing on MVPDs to be limited – with most CSA participants having the same must-carry rights that they had prior to the Incentive Auction.⁹ But, unfortunately, that may not always be the result. The Commission’s channel sharing rules, under certain circumstances, might allow an Incentive Auction winner considerable discretion to enter into a CSA with another station operating at a very different geographic location with a very different signal contour. The sharee station could then

⁹See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, 29 FCC Rcd 6567 n. 1985 (2014) (“Moreover, in light of our decision to allow channel sharing stations to relocate only within their current DMAs, any new carriage obligations resulting from channel sharing will be limited.”).

potentially seek dramatically expanded must-carry rights based on its post-Auction operation. That is exactly what has happened in this case.

Entravision is seeking in this Petition to create *new* must-carry rights in communities well beyond its historic service area — and it is doing so after being handsomely compensated for surrendering its original broadcast spectrum. Comcast urges the Commission to give a hard look at market modification petitions like this one that attempt to transform the Incentive Auction and CSAs into a vehicle for increasing the cable industry’s must-carry obligations. Granting Entravision’s Petition could trigger CSA manipulation never envisioned by the Commission. Indeed, “periphery” stations (like WJAL) would be encouraged to partner with “core” stations (like WUSA) – creating brand new must-carry burdens on cable operators.

Needless to say, if the Commission, nonetheless, grants this Petition, it should, at a minimum, affirm that it will also grant market modification requests filed by cable operators to *contract* must-carry rights for particular broadcast stations where the statutory factors applied to new CSA circumstances favor such contraction. In short, the Commission should make clear that sharee stations cannot have it both ways and only get the upside of potential market modifications.

II. UNDER THE FIVE-PRONG STATUTORY TEST, THE PETITION MUST BE DENIED

Congress established a five-prong test for evaluating market modification petitions.¹⁰ It is undisputed that this statutory test governs this proceeding. Entravision concedes “the Commission indicated that the carriage rights of spectrum sharing stations would not *automatically* change as a result of new channel sharing arrangements.”¹¹ Despite this

¹⁰ See 47 U.S.C. § 534(h)(1)(C)(ii)(I)-(V); see also Petition at 6.

¹¹ Petition at 5 (emphasis added).

concession, Entravision is effectively asking for an *automatic* market modification grant based solely on the expanded signal coverage that WJAL gains by channel sharing with WUSA. Although the Petition references each of the five statutory factors for evaluating market modification requests, it does so largely to argue that they should be ignored. Remarkably, Entravision ultimately contends that *four of the five* factors “should simply drop out of the market modification analysis” or otherwise be disregarded.¹²

Entravision relies solely on the “coverage or other local service” factor (i.e., “Factor II”) to support its Petition. But even under this factor, there are fatal weaknesses in WJAL’s showing which compel denial of the Petition. Notably, as discussed below, WJAL does not actually offer the general programming described in the Petition, nor does it offer any programming “local” to its new location. Rather, the station broadcasts programming that is *already* broadcast by another Entravision station in the Washington, DC DMA – a station that Comcast already carries in the Cable Communities. WJAL’s deficiency in this critical factor is *not* remedied by the claim that “Entravision hopes to improve the Station’s local programing in the future.”¹³ As the Commission has made clear, “[m]arket modification decisions must be made on current programming and not on promises of future programming.”¹⁴

A. WJAL’S LOCAL SIGNAL COVERAGE MUST BE BALANCED AGAINST ITS LACK OF LOCAL PROGRAMMING

The “signal and programming coverage” factor is the sole statutory factor for which Entravision claims positive credit – but success on a single factor (including this factor) should

¹² *Id.* at 22-23.

¹³ *Id.* at 23.

¹⁴ *KAZN-TV Licensee, LLC for Modification of the Television Market for KILM, Barstow, Ca.*, 30 FCC Rcd. 8126 ¶ 22 (2015).

not override failing every other factor.¹⁵ This is particularly true in the CSA context, where broadcasters could otherwise manipulate the signal coverage factor to gain additional cable carriage without adding to overall broadcast coverage. In short, WJAL's relocation and new signal coverage area do not, by themselves, support an automatic market modification grant.

Entravision's Petition relies on several cases in which the Commission reversed earlier decisions contracting a broadcaster's must-carry market, and did so based, in part, on the petitioners' improved signal coverage.¹⁶ But that precedent is easily distinguished from this case. In *KAZN-TV*, for example, the market expansion was expressly premised on *multiple* factors, including the broadcaster's investment in new transmission facilities to improve the scope of over-the-air signal coverage.¹⁷ Similarly, in *KJLA, LLC*, the decision discussed the station's improved performance under multiple factors and granted KJLA a market expansion, explaining that "[t]hese factors, *taken together* with KJLA's robust signal coverage and the recent investment it has made to better serve a significant demographic in the Los Angeles DMA, demonstrate that granting KJLA's petition would be in the public interest."¹⁸ In contrast to those cases, Entravision is relying here on a *single* factor to expand its must-carry market, and it has *not* created any net increase in over-the-air broadcast coverage. In fact, WJAL actually surrendered broadcast spectrum, moved its community of license to Silver Spring, and is now

¹⁵ See *id.* ¶ 19 n.79 ("The fact that a station is new or of specialized appeal does not mean that its logical market area is without limits or that it should be exempt from the Section 614(h) market modification process. Signal coverage does not in and of itself necessarily entitle a . . . station to carriage.").

¹⁶ Petition at 12 (citing *KAZN-TV* and *KJLA, LLC*, 26 FCC Rcd. 12652 (2011)).

¹⁷ See *KAZN-TV*, 30 FCC Rcd. ¶ 25 ("This history of carriage coupled with the fact that [the station] has invested to improve its over-the-air signal coverage through the implementation of a three site DTS transmission facility demonstrates a sincere desire to serve the Communities and narrowly supports a grant of the Petition.").

¹⁸ *KJLA, LLC*, 27 FCC Rcd. 12652 ¶ 16 (emphasis added).

using broadcast spectrum and transmission capacity already operated by WUSA prior to entering into the CSA with Entravision.

To the extent the Commission does put special weight on this one factor, it must carefully evaluate the *entire* factor – not just signal coverage, but also the extent to which the station is offering local programming directed specifically to the residents of the new coverage area. The Petition is, in fact, conspicuously weak with regard to programming coverage.

First, Entravision misrepresents the essential nature of WJAL’s programming. The Petition claims that “WJAL presently broadcasts family-friendly general programing without specialized content targeting the Comcast Communities.”¹⁹ The Petition compares WJAL to CW and ION affiliates and includes a schedule matching that programming description. *However, WJAL is not actually broadcasting that programming schedule.* To the contrary, WJAL appears to be broadcasting Spanish language programming syndicated by Entravision – LATV. This programming is already broadcast on co-owned station WMDO-CD and retransmitted by Comcast on the cable systems in question. The Petition makes absolutely no mention of these material facts.²⁰

Second, the Petition does not even attempt to argue that WJAL currently offers a modicum of locally-targeted programming. In fact, Entravision concedes that WJAL has no content “targeting the Comcast Communities.” Entravision’s vague claim that it “hope[s] to improve the Station’s local programing in the future”²¹ cannot justify market modification.²²

¹⁹ Petition at 18.

²⁰ See 47 C.F.R. § 1.17 (“No person subject to this rule shall . . . intentionally provide material factual information that is incorrect or intentionally omit material information. . . .”).

²¹ Petition at 23.

²² See *KAZN-TV*, 30 FCC Rcd. ¶ 22.

WJAL's lack of local programming, notwithstanding 30 years of operation, fatally undermines its demand for expanded must-carry rights.

B. CARRIAGE OF WJAL WOULD NOT IMPROVE PROGRAMMING COVERAGE OF THE CABLE COMMUNITIES

Entravision concedes that WJAL fails the “improve programming coverage” factor because: (1) Comcast already carries a panoply of local broadcast channels, and (2) WJAL does not even claim to offer local programming.²³ Confronted with these unfavorable facts, Entravision asks the Commission to ignore this factor entirely – asserting that it serves only as an “enhancement factor.”²⁴

The Commission cannot accept Entravision's invitation. The statute identifies five factors that might justify imposing must-carry burdens, and the failure of any factor must be considered before granting new must-carry rights. Although failing this factor alone may not be disqualifying, that does not mean the factor should be entirely ignored – particularly in the context of a broadcaster seeking expanded must-carry rights based on a CSA. If nothing else, WJAL's failure under this factor should prompt the Commission to increase its scrutiny of WJAL's performance under the remaining factors.

C. CARRIAGE OF WJAL IN THE CABLE COMMUNITIES WOULD NOT PROMOTE ACCESS TO IN-STATE BROADCAST STATIONS

The Petition devotes just five lines to the “in-state broadcast” factor. Rather than claim that this factor somehow supports the Petition, Entravision argues, “because the Virginia-Maryland-DC metropolitan area that comprises the Washington, D.C. DMA is well-served by

²³ Moreover, as noted above, WJAL appears to be transmitting programming already available through Entravision's station WMDO-CD and carried by Comcast in the Cable Communities.

²⁴ Petition at 21.

several in-state broadcast signals, under Commission precedent this factor is inapplicable.”²⁵ In the Petition’s conclusion, Entravision contends that the factor “should simply drop out of the market modification analysis.”²⁶

As explained above, failing a particular statutory factor ordinarily might not be disqualifying, but that does not mean that the factor should be entirely ignored – particularly in the context of a broadcaster seeking expanded must-carry rights based on a CSA. WJAL’s failure under this factor means that, at a minimum, the Commission should increase its scrutiny of the remaining factors.

D. WJAL LACKS HISTORICAL CARRIAGE IN THE CABLE COMMUNITIES

In addressing the “historic carriage” factor, Entravision concedes that “WJAL has no history of cable carriage in the Comcast Communities.”²⁷ Confronted with this obvious adverse fact, Entravision asks the Commission to ignore WJAL’s lack of historical carriage and look instead at the historical carriage of its channel sharing host, WUSA.²⁸ But WJAL, *as an established station*, should be evaluated based on its own historical carriage (or lack thereof). The historic carriage of WUSA (or other Washington, DC licensees) in the Cable Communities at best mitigates WJAL’s own lack of carriage. The legal question here, after all, is whether WJAL (not WUSA) is entitled to must-carry status.

Entravision next attempts to discount the importance of the historic carriage factor by claiming that “the Commission has long recognized that *new* stations will not have a history of carriage and that this factor is thus of limited relevance in market modification cases involving

²⁵ *Id.* at 20.

²⁶ *Id.* at 22.

²⁷ *Id.* at 7.

²⁸ *See Id.*

such stations.”²⁹ But, as Entravision concedes, “WJAL is not new to broadcast television service.”³⁰ Rather, the Station has been in operation for 30 years. WJAL’s lack of historic carriage in the Cable Communities weighs heavily against granting the Petition.

Entravision further contends that its failings under this statutory factor can be overcome based on its carriage in “adjacent” or “nearby” Comcast systems. But the few examples Entravision provides do *not* support its contention.

Entravision cites Comcast’s carriage of WJAL in Frederick and Carroll Counties in Maryland, but that carriage does not prove a nexus with Montgomery County (let alone the rest of the DMA). Carroll County is not even in the Washington, DC DMA.

Entravision cites Comcast’s carriage of WJAL in Frederick and Clark Counties in Virginia, but again there is no nexus with Prince William and Fairfax Counties. These Counties are not even adjacent – Loudon and Fauquier Counties separate them.

Significantly, Entravision presents no evidence that WJAL is carried by competing cable operators in the actual Cable Communities, even though Comcast faces direct competition in many of the Cable Communities from Verizon and RCN. Although Entravision relies instead on DISH Network carriage of WJAL within the Washington, DC DMA, satellite carriage is of little relevance in demonstrating a community-specific nexus. Once a broadcast station is launched for satellite service, there is no additional burden in providing the station throughout the entire DMA. That is not true in the case of cable.

In any event, Entravision’s reliance on DISH carriage is undermined by its concession regarding WJAL’s lack of carriage by DirecTV, one of Comcast’s direct competitors. The Petition explains that Entravision voluntarily agreed to forego WJAL carriage on DirecTV in

²⁹ *Id.* at 9.

³⁰ *Id.*

favor of another Entravision owned local station, WMDO-CD: “WJAL is not presently carried by DirecTV, the other DBS service in the Washington, DC market, due to a retransmission consent agreement pursuant to which DirecTV retransmits Entravision’s Station WMDO-CD, Washington DC in return for Entravision not seeking must-carry treatment for WJAL.”³¹ This remarkable concession confirms that, despite its Petition, Entravision has not fully committed WJAL to serving the DC market.

Because WJAL is not carried on the Comcast systems serving the Cable Communities, the continued exclusion of the communities from the Station’s television market would neither disrupt established viewing patterns nor deprive the Station of any existing cable audience. The historic carriage factor thus also disfavors granting WJAL expanded must-carry rights.

E. WJAL LACKS VIEWERSHIP IN THE CABLE COMMUNITIES

With respect to the “viewership” factor, the Petition acknowledges that WJAL has “low to nonexistent viewership numbers across the Washington, D.C. market.”³² As with the other factors, Entravision tries to argue that this factor is of little “probative value” because WJAL is “something of a new station.”³³ But WJAL clearly is *not* a new station. It has been in operation for three decades and yet has achieved no meaningful over-the-air viewership in the Cable Communities.

Entravision contends that the Commission should consider the “mitigating circumstances” of WJAL’s recent relocation to “offset” WJAL’s lack of viewership,³⁴ but this factor – even if “mitigated” – still weighs against Entravision’s request.

³¹ *Id.* at n. 20.

³² *Id.*

³³ *Id.* at 22.

³⁴ *Id.* at 23.

In the end, Entravision's repeated calls for the Commission to disregard a multitude of adverse facts is ultimately irreconcilable with the statutory market modification test.

CONCLUSION

The Petition falls woefully short with respect to the traditional market modification criteria. Indeed, Entravision relies solely on the "signal and programming coverage" factor – yet it ultimately disregards programming coverage in favor of sole reliance on signal coverage. Entravision's erroneous description of WJAL's general programming schedule and the acknowledged absence of any local programming on WJAL, along with WJAL's failure under every other prong of the governing statutory test, compel the Commission to deny the Petition.

Such denial is especially important and warranted in this case, because grant of the Petition would invite troubling efforts to manipulate of the Commission's authorization of CSAs under the Incentive Auction. WJAL is unlikely to be the last station to receive millions of dollars to vacate its broadcast allocation and then seek must-carry rights, through a CSA, far

beyond those associated with its original allocation. Thus, denial of the Petition is not only justified based on the traditional market modification criteria, it is necessary to avoid such undesirable marketplace behavior.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I, Nichele Rice, do hereby certify on this 4th day of December, 2017, that a true and correct copy of the foregoing "Opposition to Petition for Special Relief" has been sent via U.S. mail, postage prepaid to the following:

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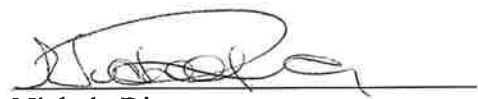
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